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SUBJECT: SLOVAK JUDICIARY: WHAT A DIFFERENCE A WEEK MAKES

REF: A) BRATISLAVA 413 B) BRATISLAVA 118

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¶11. (U) Within a week of the Justice Ministry's suspension of Judge Jana Dubovcova for expressing her views (ref a), a sea change has taken place within the judiciary. Prior to this watershed event, the number of judges willing to speak publicly about problems in the judiciary numbered about a dozen. At an October 1 press conference, three prominent judges presented petitions signed by over 100 of their colleagues expressing grave concern about the atmosphere of fear in which they work and calling for public discussion and potential changes to address the problems. Chief Justice Harabin and Justice Minister Petrikova reacted quickly, expressing a willingness to talk and claiming that the petitions prove that 'in the judiciary, there is democracy and freedom of speech.' There has been no reaction from other government quarters.

The Proverbial Straw

¶12. (U) Although several judges are being subject to seemingly endless Kafkaesque-like disciplinary proceedings and/or have been removed from the bench as a result of their views or principles, Dubovcova's case marks the first time that the Justice Ministry acted without even the pretext of another violation. The cause of her suspension and the threat to remove her from the bench stemmed directly from her public comments against Chief Justice Harabin and about the state of Justice. Within 24 hours of Dubovcova's suspension, however, the Chief of her court had withdrawn it, claiming it had become an element in the political battle opposition parties were waging against the 'independent judiciary.' We can speculate on what actually prompted Judge Busik's abrupt volte-face, but we suspect that word came down from on high that Harabin and Co. had gone too far this time. Shortly after word of Dubovcova's suspension was made public, PM Fico's spokeswoman stated that no judge should be fired for expressing their views.

¶13. (U) In September 2008, Dubovcova was the first judge to criticize Harabin after he lied publicly about his relationship with a suspected drug dealer and slurred and threatened his predecessor on the floor of parliament. The charges against Dubovcova were Harabin's payback. What he apparently did not expect was that this outrageous act would provoke a public rebuke from the Prime Minister's office, or that it would embolden so many heretofore silent judges.

A Courageous Plea

¶4. (U) On October 1, three prominent Slovak judges gave a press conference underscoring the growing fear and concern that has taken hold within the judiciary. Supreme Court Judge Katarina Javorcikova stated that 'we have never had such a feeling of threat as we do today.' Supreme Court Judge Miroslav Gavalec, who recently ruled against strong political and business interests to stop progress on a controversial dump in Pezinok (ref b), described how he and numerous colleagues have been transferred to other sections of the court after having made 'inconvenient' rulings or expressing critical views of Harabin. Gavalec is an expert in environmental law; he now handles pension cases.

¶5. (U) Javorcikova presented a short declaration, in which 105 judges from across the country stated that: 'We consider the effort of competent organs to punish judges for the public expression of their views as a further signal that threatens free discussion about the state of the Slovak judiciary. In this environment, it is difficult to work and the evident growing distrust of the public in the judiciary saddens us. It is necessary to openly discuss the causes of this state, and the atmosphere of fear in which judges cannot express a controversial or provocative idea, is an offense to freedom of expression. Having the freedom of expression is not only a right, but it is the obligation of a judge. Having independent judges is the right of every citizen.'

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¶6. (U) In addition to this statement, the judges issued a call for support from 'citizens, politicians, NGOS, media, organs of the European Union and international judges association to support our effort to change the existing conditions in the judiciary.' Among the priority recommendations: conclude current proceedings against aimed at removing judges from the bench; ensure, per Slovak law, that recommendations for removal from the bench only be made pursuant to serious breaches; require disciplinary proceedings to be published on the internet; require the Judicial Council to provide justification for decisions regarding judges.

¶7. (SBU) While it is still to early to predict what changes -- either in personnel or law -- might result from the fact that a critical mass of Slovak judges finally had the courage to speak out, it is clear that this week marks a milestone in what has, until now, been a lonely fight in which only a few participated.

The press is covering the story very aggressively. The opposition intends to mount a recall campaign against the Justice Minister, and is focusing ever more intently on the judiciary as an election issue. Two prominent NGOs (with financial support from the Embassy) will host conferences on the judiciary in the coming months. Comment: Seemingly without a qualm, PM Fico recently broke the coalition agreement by depriving SNS of a key ministry. SNS corruption at the Environment Ministry had become an embarrassment and a liability to Fico. We doubt he will be willing to do the same with the judiciary, i.e., to wrench it from Meciar and Harbin's grasp, but the events of the past seven days suggest that this sector, too, will become an election-year vulnerability for Fico. They also demonstrate that opposition to the misuse of power in the judiciary has finally developed some real momentum.

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